received by that network switch port. Hence, prioritization of the data frames is distributed among the network switch ports. These and other features are neither disclosed nor suggested in the applied prior art.

The Examiner's Response to Arguments demonstrates a **remarkable disregard** for the explicit teachings of the reference. As demonstrated below, the Examiner ***mischaracterizes*** the explicit teachings of Fawaz to synthesize a distorted interpretation of the reference that has no rational basis whatsoever.

In particular, the Examiner continues to take the unsupportable position that Fawaz discloses determining the priority for the received data frame at the network switch port, citing paragraphs 51-53 of Fawaz. As described previously by Applicant, the cited portions of Fawaz relied upon by the Examiner do *not* disclose determining the priority at the network switch port, as alleged by the Examiner, but rather disclose that the packets are evaluated centrally by a classifier 304. The cited paragraphs 51-53 relied on by the Examiner are reproduced below:

[0051] A first embodiment of a node 102, 106 is shown in FIG. 6. Upon arrival at a QoS Node 102, 106, packets (e.g., ethernet frames) are placed into an input buffer 302. Subsequently, classifier 304 classifies each packet in accordance with an SLA. To do so, classifier 304 reads at least the source and destination identifier of the packet to be classified, for instance, Layer 2 ethernet frame addresses. The classifier 304 then correlates the pair of identifiers with a corresponding SLA. In one embodiment, such source and destination identifiers are physical addresses, while in other embodiments such source and destination addresses may be composed of other information.

[0052] In addition to source and destination identifiers, other embodiments of the invention may utilize other information for packet classification. For instance, the type of application (e.g., e-mail) from which the packet originated can additionally be used to classify packets with an SLA. Thus, the information used for classifying packets is referred to herein as "classification information."

[0053] In one embodiment of the invention, once an SLA has been identified for the packet using the various classification information, the packet is placed into a FIFO-type buffer 306-312 that corresponds to the SLA, forming a queue of packets for the SLA. Unlike ATM and other protocols, the packets do not need to be reformatted or modified in any way.

As apparent from the foregoing reproduction of paragraphs 51-53 relied upon by the Examiner, Applicant's description of Fawaz was accurate: Fawaz describes in Figure 6 (and Figure 8) that the data packets that are received by the input buffers 302 (402) are passed to the classifier 304 (404), which classifies each packet in accordance with an SLA (see, e.g., Paragraph 51, 69).

Hence, Fawaz describes that the classification of packets is performed centrally by the classifier 304 (404).

Independent claims 1 and 12, however, specify that each network switch port includes a port filter, and that the port filter determines the priority value for the corresponding packet received by the network switch port. Fawaz provides no disclosure or suggestion of performing classification in each network switch port, as claimed. Moreover, there is no disclosure or suggestion whatsoever that the classifier should be implemented within each input buffer 302 (402), since such a modification would render inoperable the ability of the classifier 304 to move a classified packet into the appropriate SLA buffer 306-312 (see par. 53 quoted above).

The Examiner's Response to Applicant's arguments on page 4 demonstrates a remarkable disregard for the explicit teachings of the reference:

> The teaching referenced does not disclose a centralized Classifier as alleged by applicant, note the teaching is directed to each *network switch port* 106, 102 as shown by figure 1 [sic].

This tortured interpretation is inconsistent with the explicit teachings of the reference, as shown below (Applicant presumes the Examiner intended to refer to Fig. 4, as Fig. 1 does not show any reference numeral 106 or 102, but rather illustrates Time Division Multiplexing).

Fig. 4 illustrates a "network 100" having standard "packet switches 108" (denoted with square symbols), such as routers with standard ethernet interfaces, that are attached to the "ring 104" via "a ring node 102" or "a multiplexing node 106". (See par. 44, lines 1-8).

Further, the ring nodes 102 are "interconnected to form a ring" (par. 41, lines 4-5).

Hence, Fawaz explicitly describes the elements 102 and 106 as ring nodes and multiplexing nodes, respectively. There is no disclosure whatsoever to support the Examiner's tortured interpretation of the elements 102 and 106 as network switch ports, as asserted.

In fact, the Fawaz explicitly states that the "QoS nodes 102, 106 [may] include ethernet interfaces that operate at 1Gbps" (par. 42, lines 1-2), and illustrates those ethernet interfaces as "input buffers" 302, 402 in the first and second embodiments illustrated in Figs. 6 and 8, respectively. In both embodiments of Figs. 6 and 8, the classifier 304, 404 is centrally located and separate from the input buffers 302, 402.

There is absolutely no disclosure whatsoever to suggest that the classifier 304, 404, of Fawaz would be implemented within each network switch port, as claimed.

The law is well settled that a claim is not anticipated unless the reference unequivocally discloses each and every element in the claim. As specified in MPEP §2131: "'A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference' *Verdegaal Bros. V. Union Oil Co. of California,* 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). ... 'The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)." MPEP 2131 (Rev. 2, May 2004, at p. 2100-73).

Hence, the rejection should be withdrawn because it fails to demonstrate that the applied reference discloses each and every element of the claim. "Anticipation cannot be predicated on teachings in the reference which are vague or based on conjecture." Studiengesellschaft Kohle mbH v. Dart Industries, Inc., 549 F. Supp. 716, 216 USPQ 381 (D. Del. 1982), aff'd., 726 F.2d 724, 220 USPQ 841 (Fed. Cir. 1984).

Not only has the Federal Circuit admonished that anticipation cannot be based on teachings which are vague or based on conjecture, but also made clear that any insufficiency in the reference cannot be cured by any improper interpretation of the reference: "a prior art patent is a reference only for that which it teaches." Corning Glass v. Sumitomo Electric, 9 USPQ2d 1962, 1970 (Fed. Cir. 1989).

As apparent from the foregoing, Fawaz simply does not teach or suggest a plurality of switch ports, each including a port filter for determining the priority of the corresponding received packet, as claimed. For these and other reasons, the §102 rejection of claims 1, 3, 12-13 and 18 should be withdrawn.

Further, claim 12 specifies an integrated network switch. As specified in the MPEP §2111.02, Rev. 2, May 2004 at page 2100-50 to 2100-51: "Any terminology in the preamble that limits the structure of the claimed invention must be treated as a claim limitation." (Citing Corning Glass Works v. Sumitomo Elec. U.S.A., Inc., (See also MPEP §2111.02, Rev. 2, May 2004 at page 2100-51: "In claims directed to articles and apparatus, any phraseology in the preamble that limits the structure of that article or apparatus must be given weight" (citing In re Stencel, 828 F.2d 751, 4 USPQ2d 1071 (Fed. Cir. 1987))) (See also Kropa v. Robie, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951)(preamble reciting "An abrasive article" deemed an essential limitation)).

There is no disclosure whatsoever that the QoS nodes of Fawaz are implemented as integrated network switches, as claimed. For this reason alone the §102 rejection of claim 12 should be withdrawn.

For these and other reasons, the §102 rejection should be withdrawn.

Claims 4-11 and 14-17 are believed to be allowable in view of the foregoing.

In view of the above, it is believed this application is in condition for allowance, and such a Notice is respectfully solicited.

To the extent necessary, Applicant petitions for an extension of time under 37 C.F.R. 1.136. Please charge any shortage in fees due in connection with the filing of this paper, including any missing or insufficient fees under 37 C.F.R. 1.17(a) or 1.17(e), to Deposit Account No. 50-0687, under Order No. 95-320, and please credit any excess fees to such deposit account.

Respectfully submitted,

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